

ALERT

Supreme Court Rules that Violation of FCA Seal Requirement Does Not Require Dismissal

December 7, 2016

WHAT: In yet another unanimous decision involving the False Claims Act (FCA), the Supreme Court of the United States has ruled that a violation of the FCA's seal requirement does not mandate dismissal of a relator's claim. The Court held that the remedy for such a violation should be left to the discretion of the district court.

WHEN: The Court released its opinion yesterday, December 6, 2016.

BACKGROUND: The FCA requires that a relator's *qui tam* complaint be served on the Government, filed in camera, and remain under seal for at least 60 days. 31 U.S.C. § 3730(b). In April 2006, Respondents Cori and Kerri Rigsby filed a *qui tam* complaint under seal. Before the seal was lifted, however, an attorney for the relators disclosed the existence of the *qui tam* action to the news media, and the relators discussed their allegations with a Member of Congress. The news outlets and the Congressman then publicly discussed the allegations underlying the action. State Farm moved to dismiss the claim based on the seal violation. The district court applied the three-factor test set out in *U.S. ex rel. Lujan v. Hughes Aircraft Co.*, 67 F.3d 242, 245-46 (9th Cir.1995), and denied State Farm's motion. On appeal, the Fifth Circuit affirmed, endorsing the *Lujan* test and refusing to dismiss the relators' FCA claim. Yesterday, in *State Farm Fire and Casualty Co. v. United States ex rel. Rigsby*, the U.S. Supreme Court affirmed the Fifth Circuit's ruling, though it did not adopt the *Lujan* factors or any other test. The Court held that Congress did not expressly provide for mandatory dismissal in the statute, and that such a strict requirement would prejudice the Government by depriving it of the assistance of private parties.

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Practice Areas

Civil Fraud, False Claims, *Qui Tam* and Whistleblower Actions
Government Contracts
Internal Investigations and False Claims Act
White Collar Defense & Government Investigations

WHAT DOES IT MEAN FOR INDUSTRY: Dismissal is still available for a violation of the FCA seal requirement, but it will be left to the discretion of the district court. When presented with a seal violation, companies should request alternative remedies as well. The Court notes that sanctions such as “monetary penalties or attorney discipline” are still available when dismissal is not warranted. *State Farm*, No. 15-513, 2016 WL 7078622, at *10. In addition to looking for public information supporting a seal violation, companies should also use the discovery process to determine whether the relator disclosed information before the seal was lifted and to whom. As the Court did not adopt a specific test for evaluating seal violations, companies should be prepared to argue for dismissal or sanctions beginning with either *Lujan’s* three factor test: (1) the actual harm to the Government, (2) the severity of the violations, and (3) the evidence of bad faith; or the test established in *U.S. ex rel. Pilon v. Martin Marietta Corp.*, under which an FCA claim should be dismissed if it, “irreversibly frustrate[s] the congressional goals underlying [the statute].” 60 F.3d 995, 1000 (2d Cir. 1995).

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